

Title 50—Wildlife and Fisheries
**CHAPTER I—UNITED STATES FISH AND
WILDLIFE SERVICE, DEPARTMENT OF
THE INTERIOR**

**SUBCHAPTER B—TAKING, POSSESSION, TRANS-
PORTATION, SALE, PURCHASE, EXPORTATION
AND IMPORTATION OF WILDLIFE**

**PART 17—ENDANGERED AND
THREATENED WILDLIFE AND PLANTS**

**Determination that the Marianas Mallard is
an Endangered Species**

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rulemaking.

SUMMARY: The Director, U.S. Fish and Wildlife Service (hereinafter, the Director and the Service, respectively), hereby issues a final rulemaking pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531-1543, 87 Stat. 884; hereinafter the Act), which would determine the Marianas mallard (*Anas oustaletti*) to be an Endangered species. This species occurs in the island of Guam and the Mariana Islands of Rota, Saipan, and Tinian.

DATE: This rulemaking will become effective on July 5, 1977.

ADDRESS: Materials pertinent to this final rulemaking are available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director, Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 22, 1975, the Fund for Animals, Inc., requested the U.S. Fish and Wildlife Service to list 216 taxa of plants and animals as Endangered species pursuant to the Act. These species appear on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, but do not appear on the U.S. List of Endangered Wildlife. Acting on this request, the Fish and Wildlife Service published in the FEDERAL REGISTER (40 FR 44329) on September 26, 1975, a proposed rulemaking that would determine these 216 species to be Endangered species. The Marianas mallard (*Anas oustaletti*) was

included in this proposed rulemaking. The final rulemaking that determined 15 of the 216 taxa to be Endangered species was published in the FEDERAL REGISTER (41 FR 24062) on June 14, 1976. Marianas mallard was not included in the final rulemaking because the corners of the "States" in which the species is resident were inadvertently not notified of our proposal as required by the Act. These Governors have been notified and allowed the required 90 days for comment. The procedural requirements of the Act, having thus been fulfilled, the Fish and Wildlife Service hereby issues a final rulemaking that determines the Marianas mallard to be an Endangered species.

SUMMARY OF COMMENTS

Only one letter of comment pertained to the listing of the Marianas mallard was received. This letter was in support of the proposed listing.

**SUMMARY OF FACTORS AFFECTING THE
SPECIES**

Section 4(a) of the Act states that the Secretary may determine a species to be an Endangered or a Threatened species because of any of the following reasons:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial purposes, sporting, scientific or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or manmade factors affecting its continued existence.

The Marianas mallard is now rare and its population is decreasing. Population estimates range from twenty-five birds being alive today. Wetlands, particularly freshwater lakes, reedbeds, as well as lagoons, streams, and flooded fields, are essential habitat for this species. These wetlands have been and are continuing to be extensively drained. Hunting of ducks, including the Marianas mallard, continues in the Marianas.

EFFECT OF THE RULEMAKING

The effects of this determination rulemaking include, but are not necessarily limited to, those discussed by the Endangered Species regulations.

Endangered Species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The prohibitions referred to above and found at § 17.21 of Title 50 and, for convenience, are reprinted below:

§ 17.21 Prohibitions.

(a) Except as provided in Subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c) (1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c) (1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

(i) Aid a sick, injured or orphaned specimen; or

(ii) Dispose of a dead specimen; or

(iii) Salvage a dead specimen which may be useful for scientific study; or

(iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(5) Notwithstanding paragraph (c) (1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties take Endangered Species, for conservation programs in accordance with the Cooperative Agreement, provided that such taking is not reasonably anticipated to result in: (i) the death or permanent disabling of the specimen; (ii) the removal of the specimen from the State where the taking occurred; (iii) the introduction of the specimen so taken, or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or (iv) the holding of the specimen in captivity for a period of more than 45 consecutive days."

(d) *Possession and other acts with unlawfully taken wildlife.* (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d) (1) of this section, Federal and State law enforce-

ment officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection.

The exceptions to these prohibitions are found at §§ 17.22 and 17.23 of Title 50 and provide for the issuance of permits authorizing otherwise prohibited activities with Endangered species. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

INTERAGENCY COOPERATION

The determination that the Marianas mallard is an Endangered species will make the species eligible for the protection provided by Section 7 of the Act which reads as follows:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the

destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

No Critical Habitat is being determined for the Marianas mallard at this time but such action will be considered when adequate data to support such a determination are available.

NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street, NW., Washington, D.C. 20240, and may be examined during regular business hours. The action taken in determining the Marianas mallard to be an Endangered species is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, thus it does not require an Environmental Impact Statement.

This final rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884). The amendment will become effective on July 5, 1977.

This final rulemaking was prepared by Mrs. Lorraine K. Williams, Office of Endangered Species.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: May 26, 1977.

GEORGE W. MILLAS,
Acting Director, Fish and
Wildlife Service.

Accordingly, Part 17, Subpart B, § 17.11, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. By adding the Marianas mallard to the list under "Birds" as indicated below:

Species			Range		Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered			
Mallard, Marianas	<i>Anas onalesti</i>	N/A	Island of Guam, Mariana Islands (Rota, Saipan, Tinian).	Entire.....	E	N/A